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September 17, 2007

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From: Bob Runkel  
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Regarding: Notice of Proposed Information Collection Requests  
IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR)

The Office of Public Instruction (OPI) appreciates having the opportunity to comment on proposed changes to the State Performance Plan/Annual Performance Report (SPP/APR) indicators.

We appreciate the Department of Education's interest in receiving public comment concerning the necessity of this collection, estimate of burden, and how the department could minimize the burden of the collection on respondents.

Estimate of Burden

The OPI is concerned that the burden of hours estimated to be 19,500 nationwide could be as much as a hundredfold underestimate of actual time spent collecting and reporting data. The figure is likely to be an underestimate of state agency time alone. As a result of the data collection and reporting burden on state agencies, state agencies are, of necessity, hiring additional staff, and in some cases establishing entirely new units for special education data management. While state agencies have struggled to establish information technologies to support and streamline data collection, these efforts have only served to partially compensate for the time and effort required. More importantly, however, the estimated number of hours most certainly does not reflect the time and effort of teachers and school administrators across this nation in completing data collection reports required by state agencies to meet these requirements, some of which are not specifically required by IDEA or its implementing regulations.

*"It is the mission of the Office of Public Instruction to improve teaching and learning through communication, collaboration, advocacy, and accountability to those we serve."*

The OPI frequently receives expressions of concern from school administrators across our state concerning the additional data collection and reporting burden on public schools and the necessity of hiring additional staff just to report the data. Paperwork has been shown to have a significant impact on special education teacher satisfaction and teacher retention. Whatever paperwork savings were realized as a result of the IDEA 2004 has been lost due to added data reporting requirements.

We believe that a comprehensive analysis of the data demands on our special education teachers, related service providers, and school administrators should be conducted prior to the imposition of these data reporting requirements. Much like an environmental impact statement is required for major construction projects, a human resource impact statement should be required prior to any imposition of data and collection requirements that take away from a teacher's time in the classroom. Only after such a comprehensive analysis could an accurate estimate be provided of the actual time spent collecting and reporting data under this section.

### Timelines

States are developing comprehensive, agency-wide systems for data collection in response to added data collection and reporting burdens imposed by various offices of the U.S. Department of Education. These systems generally are designed to collect data through student-centered data collection utilizing unique student identifiers. While the use of unique student identifiers holds great promise for improving the quality of data, it also presents new challenges to states when adding to or modifying data collections.

Student information systems that tap data directly from individual student records often rely on data elements that are embedded in documents such as the IEP. In the case of data drawn directly from the IEP, the data collection cannot occur unless the added or modified data element has been fully operational as a required component of the IEP for at least one year.

Adding new data elements or modifying an existing data element requires considerable lead time before the data element becomes fully operational. To ensure the system is fully operational and does not create conflicts with other components of the software program, vendors often require as much as six months (or more) lead time from state agencies to modify software prior to implementation. Modifications often require updated training of local education agency personnel who are responsible for entering data and additional time for training state education agency staff in the analysis and use of the revised software. All this must occur before the one-year timeline begins that is necessary to populate statewide annual IEPs allowing the IEPs to be used for data collection. As a result, states have a minimum of a two-year, and in some cases, as much as a three-year lag time between the official notice from the U.S. Department of Education of a new or modified data collection requirement and their subsequent ability to collect and report data.

For example, Montana recently modified its IEP form to reflect data definitions taken directly from **Indicator 6** in the APR. When Montana IEP teams determine the preschool child's education setting, the IEP document becomes the data source for reporting **Indicator 6**. To implement the revision called for in the Notice of Proposed Information Collection Requests for **Indicator 6** would require software development, revised forms, and statewide training of personnel in the new data definitions. All of this must be in place on December 1 of the year preceding the Child Count collection. Depending on the timing of the U.S. Department of Education final notice of the data change, this process could take as much as three years.

High-quality data is essential for improving the quality of our special education programs. Unrealistic timelines for implementation of revisions in data collection requirements compromises the quality of the data. The imposition of unrealistic timelines for implementation of revised data collection requirements has become as much of a burden on states as the collections themselves. The Notice of Proposed Information Collection Requests makes no reference to the timeline that will be imposed on states to collect and report on the revised data elements. Given the circumstance, it should.

### **Indicators 1 and 2**

We support proposed language changes to these indicators. However, we strongly recommend that the definitions used be exactly the same as those used under NCLB.

### **Indicator 3**

Indicator 3 duplicates data that is already reported under NCLB. We strongly recommend eliminating this indicator. If this indicator is not eliminated, the language should be amended to use the same definition as reported under NCLB.

### **Indicator 4**

We support the Office of Special Education's proposal to eliminate Indicator 4 from the Part B Measurement Table.

### **Indicator 5**

**Indicator 5** and all of its subpart indicators should also be eliminated. We do not believe that IDEA 2004 would require states to report in the SPP on the education setting of students with disabilities. The statute requires each state to collect valid and reliable information on the provision of a "free appropriate public education (FAPE) in the least restrictive environment (LRE)." We read this to mean that the indicator should be a reflection of whether students are

receiving a FAPE in the least restrictive environment that has been established by the IEP team. What should be measured is the assurance that FAPE is being delivered in whatever setting the IEP team determines appropriate.

Because of the above interpretation, the Office of Special Education Programs (OSEP) has presumed that Congress intended that states set targets for education settings. Section 612 (a)(5) defines least restrictive environment. It states in part that: "...removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

The law does not presume that the least restrictive environment is a general education classroom nor does the law set such a standard. Historically, Montana has had an exceptionally high proportion of students placed in general education classrooms. As a result of our small schools and rural nature, special education teaching staff are used to working closely with their general education counterparts and are often very successful in integrating students with disabilities in general education classrooms. Obviously, this has many benefits, including access to the general curriculum.

While we believe the above argument for eliminating Indicator 5 is compelling, if the department chooses not to eliminate the indicator, we become quite concerned that states may miss targets for Indicator 5 due to factors totally independent of efforts that address the indicator.

Over the past two years, Montana has seen a drop in Child Count. At the same time our trend line for LRE appears to indicate that students are being served in more restrictive environments. We do not think this is a coincidence. The drop in Child Count has coincided with school district efforts to implement Response to Intervention (RtI). It is logical to assume that the majority of students that have been deflected from being placed in special education as a result of RtI are students with less significant learning challenges. Students with less significant learning challenges would have likely been placed in general education settings for a majority, if not all, of their school day.

If RtI works as intended, only those students with the most significant learning challenges will be served by special education. Students with the most significant learning challenges are more likely to have their LRE setting to be special education settings. Surely, as states implement RtI and special education predominately serves students with the most challenging learning needs, the U.S. Department of Education would not want an indicator to unintentionally penalize states or districts for effective educational practices.

By establishing indicators for LRE as a stand-alone measure in the SPP and requiring "improvement" when setting Annual Performance Report (APR) targets, the OSEP overrides the

important tenant of the IEP process by assuming more students should be placed in general education settings. For states such as ours, the "improvement" target in the APR should perhaps be set in the opposite direction. We have no way to know. As it stands, the indicator expresses a value system as opposed to a requirement of the law.

Determinations of whether IEP teams are not making good choices when determining education settings is better left to the monitoring process than a performance target in the SPP.

### **Indicator 6**

The proposed language for **Indicator 6** will require states to collect data reflecting the preschool child's whole day and not just time spent receiving publicly provided preschool services. This is problematic for at least two reasons. 1) The proposed language will require parents to divulge information concerning their child that they may prefer not to share with the public school. Schools cannot and should not compel parents to provide information concerning their child care outside of school. 2) The proposed language will introduce inaccuracy to the data collection. Child care and private preschool settings for preschool children have a high probability of changing throughout the year. Schools have no control over the various preschool settings that parents may choose and it will not be possible for teachers who complete the Child Count to know, on December 1, where each child's preschool or day care setting is outside of the public school program. For those states that have a student-centered data collection system and record the child care setting on the date the IEP is completed, when the IEP is later used as the data source, it is likely to no longer be an accurate reflection of the child's preschool or child care setting as of the December 1 Child Count.

**Indicator 6** is problematic for another reason. As proposed, states such as Montana, who do not have universal pre-K programs, will appear to be serving students in more restrictive environments. In situations where states do not have universal pre-K programs, IEP teams have limited opportunity to place students in education settings where the majority of students are not students with disabilities. As a result, the public and OSEP may become alarmed with the practices of particular states when the "problem" (lack of available universal preschool) is unrelated to the indicator. We believe that indicator six should be eliminated.

### **Indicator 8**

We believe this indicator should be removed. The IDEA requires that parents be included in IEP team decisions and states monitor to ensure this compliance requirement is addressed. Nowhere in the IDEA or its implementing regulations is there a requirement that facilitation of parent involvement be measured. We believe this requirement exceeds what is required by the IDEA and causes an undue financial, as well as reporting, burden on states and school districts.

### Summary

The imposition of additional data reporting requirements has been a challenge for OSEP, states, and schools. Montana strongly supports a sound accountability system based on accurate data that can be used to make good judgments on areas of needed improvement. However, we believe that the 20 performance indicators with their many subparts go well beyond what was envisioned by Congress. States and school districts are facing an undue data collection and reporting burden. Careful re-examination of all indicators is necessary to determine: 1) whether far fewer indicators might serve as adequate "bellwether" examples of the quality of our special education programs and 2) whether indicators that are already collected under the Elementary and Secondary Education Act can be outright substituted without modification.

Congress and the president placed a high priority in the reauthorization of IDEA on reducing paperwork to improve retention of our special education staff and to allow additional time for teaching and learning. The numerous data elements contained in the proposed data collection compromises this priority. We respectfully request that as the Office of Management considers these comments, and those provided by others such as the National Association of State Directors of Special Education, careful examination is given as to whether multiple indicators could be eliminated from the data collection process to leave more time for teaching and learning in our classrooms and for our state agencies to refocus their efforts on school improvement.